

REMARKS/ARGUMENTS

Claims 6 – 20, 22-27, 29, and 47 – 52 are pending in the application. Pending claims 6, 27, 47 and 52 are amended. No new matter has been introduced. Amendment to the claims are support in the specification and the figures. All changes made to claim 6 are well illustrated by Figures 1-8 of the specification, by reference number 115. Indentation or cavity 115 is shown to have an open end and opposing closed end with a side wall.

Reconsideration is respectfully requested in light of the above claim amendments and the remarks presented below.

The Examiner has rejected claims 6, 22, 23, 49 and 52 under 35 U.S.C. §102(b) as being anticipated by Cremascoli, United States Patent 4,813,959 (“Cremascoli”). On pages 5 and 6 of the office action, the Examiner has noted, “[t]he Examiner is not giving any special definition to the terms “attachment region” when the claim does not set for any particular structure.” Applicant has amended claim 6 to describe element 115 illustrated in the figures. Applicant earnestly believes that the configuration of amended claim 6 is not disclosed by Cremascoli. More specifically, neither the cavity as claimed is disclosed, nor is the configuration of how the ceramic component is connected to the attachment region. Moreover, claim 6 recites a “stent,” which Cremascoli fails to disclose. As a result, Applicant believes that claim 6 is patentable over Cremascoli. Claims 22, 23, 49 and 52 depend from claim 6 and are patentably allowable for at least the same reason.

Regardless of its dependency, Applicant further believes claim 52 is allowable on its own merit as the reference fails to teach, “the surface of the attachment region matches the thermal characteristics of the ceramic component.”

The Examiner has rejected claims 6, 22, 23, 47 and 49 – 52 under 35 U.S.C. §102(b) as being anticipated by Pope et al., United States Patent 6,290,726 (“Pope”). Claim 6 has been amended to recite a stent. Pope fails to meet this limitation. Accordingly, Applicant believes that claim 6 is now patentably allowable over Pope. Claims 22, 23, 47, 49, 50, 51, and 52 depend from claim 6 and are patentable allowable for at least the same reason. Further,

Applicant earnestly believes that Pope fails to teach the materials of claim 50 or the thermal characteristics of claim 52.

The Examiner has rejected claims 6 – 8, 22, 23, 27, 29, 47 – 49, and 52 under 35 U.S.C. §102(e) as being anticipated by Gayer et al., United States Patent 6,461,385 (“Gayer”).

First and foremost, Applicant respectfully traverses the use of Gayer as a reference since it fails to teach a ceramic. Applicant maintains the position that “hydroxyapatite” is not ceramic and the Examiner has failed to provide any evidence that shows that it is a ceramic. Hydroxyapatite is a naturally occurring mineral form of calcium apatite and not a ceramic. Applicant respectfully requests that the Examiner provide evidence for his position.

Second, Gayer teaches that layer 404 is hydroxyapatite and layer 406 is a polymer layer including hydroxyapatite particles. In the previous response, Applicant argued that polymer layer 406 cannot be a second porous region as claimed, since it is not ceramic, but polymeric. In rebuttal, the Examiner, on page 6 of the office action, noted that “so long as ceramic material is present it meets the claim [limitation of ceramic component].” Applicant is assuming that the Examiner’s position is that since hydroxyapatite particles are present, layer 406 becomes “a ceramic component” in light of the fact that the transitional phrase “comprising” follows “ceramic component.”

Even if the Examiner’s assertion was true, claim 6 recites that the second porous region is less porous than the first porous region. Nowhere in Gayer is this distinction disclosed. If the Examiner is equating hydroxyapatite layer 404 and hydroxyapatite particles in polymer layer 406 as ceramic, then since both materials are the same, they will have the same porosity. Further, Gayer does not disclose that the polymer of layer 406 has a greater porosity than the hydroxyapatite layer 404. Porosity of layer 406 could certainly be significantly less than layer 404.

Third, claim 6 has been amended to recited “a first porous ceramic region” and “second porous ceramic region” having less porosity “than the first porous ceramic region.” Applicant earnestly believes that Gayer fails to disclose this configuration.

Accordingly, Applicant believes that claim 6 is patentable over Gayer. Claims 7, 8, 22, 23, 47, 48, 49 and 52 depend from claim 6 and are patentable allowable for the same reason. Further, with respect to claim 52, Gayer fails to teach the matching thermal characteristics.

With respect to claim 27, Gayer fails to teach “ceramic component comprising a glass or ceramic, the ceramic component having a first porous ceramic or glass side and a second less porous ceramic or glass side, wherein the less porous ceramic or glass side of the ceramic component is fused on or within the attachment region.” Gayer fails to teach a first and second ceramic or glass sides of different porosity. Accordingly, claim 27 is believed to be patentably allowable over Gayer. Claim 29 depends from claim 27 and is patentably allowable for at least the same reason.

The Examiner has rejected claims 7 and 8 under 35 U.S.C. §103 as being obvious over Cremascoli in view of Alt, United States Patent 6,099,561 (“Alt”). As indicated above with respect to claim 6, Cremascoli fails to teach the configuration of the claimed cavity and the configuration of the first and second ceramic regions with respect to the cavity. Alt does not cure this deficiency. Accordingly, claim 6 is allowable over Cremascoli in view of Alt. Claims 7 and 8 depend from claim 6 and are patentably allowable for at least the same reason.

The Examiner has rejected claim 28 under 35 U.S.C. §103 as being obvious over Gayer in view of Ding et al., United States Patent Application Publication No. 2002/091433 (“Ding”), or, in the alternative, in view of Yan, United States Patent No. 6,240,616 (“Yan”). Claim 28 has been added to claim 27, and in turn canceled. Regardless, as indicated above, Gayer fails to disclose “ceramic component comprising a glass or ceramic, the ceramic component having a first porous ceramic or glass side and a second less porous ceramic or glass side, wherein the less porous ceramic or glass side of the ceramic component is fused on or within the attachment region.” Neither Ding nor Yan cure this deficiency. Accordingly, claim 27 is patentably allowable over the combination.

It is also worth noting that the use of the wires of Gayer to form a stent from wires, a concept disclosed in Ding or Yan, would not include the element of an “indentation in the surface” that forms the attachment region for the ceramic component, as recited by claim 27.

Gayer discloses indentations in a device body (column 7, lines 28 – 31). Gayer also discloses “fibrillar wire” which is “arranged in a wooly structure” (column 7, line 37 – 38). The wooly structure may be attached to the prosthetic device core (see Gayer Figure 3). Although in column 9, lines 44-47, Gayer does disclose that both the wire and the device body can be coated with layers 402, 404 and 406, there is no disclosure in Gayer of indentations in the surface of the wire. To be clear, Gayer discloses indentations on the device body not the wire. Thus, even if the wire embodiment of Gayer was used to make the wire stents of Ding or Yan, the indentations of claim 27 would not be present, since there is no hint or suggestion of using the indentations of the device body of Gayer with the wire of Gayer.

Rejoinder of Claims

As Applicant respectfully submits that the pending claims are in condition for allowance, Applicant requests rejoinder of withdrawn claims 9 - 20 and 24 – 26 under MPEP § 821.04 which recites:

The propriety of a restriction requirement should be reconsidered when all the claims directed to the elected invention are in condition for allowance, and the nonelected invention(s) should be considered for rejoinder. Rejoinder involves withdrawal of a restriction requirement between an allowable elected invention and a nonelected invention and examination of the formerly nonelected invention on the merits.

In order to be eligible for rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim.

In light of the foregoing claim amendments and remarks, this application is considered to be in condition for allowance. Removal of the rejections is respectfully requested.

If necessary to ensure a timely response, this paper should be considered as a petition for an Extension of Time sufficient to provide a timely response. The undersigned authorizes the examiner to charge any fees that may be required, for an extension of time or for any other

reason, or credit of any overpayment to be made, to **Squire, Sanders, and Dempsey Deposit Account No. 07-1850.**

Should the Examiner have any questions regarding this communication, the Examiner is invited to contact the undersigned at the telephone number shown below.

Date: April 24, 2009

Squire, Sanders & Dempsey L.L.P.
One Maritime Plaza, Suite 300
San Francisco, CA 94111
Telephone (415) 954-0323
Facsimile (415) 393-9887
ckerrigan@ssd.com

Respectfully submitted,



Cameron Kerrigan
Attorney for Applicants
Reg. No. 44,826